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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LONE MOOSE MEADOWS, LLC

Defendant.

CV 05-76-BU-SEH

COMPLAINT

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency, alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d), to obtain injunctive relief and civil penalties against Lone Moose Meadows, LLC ("Defendant") for the discharge of pollutants into waters of the United States in Gallatin County, Montana without authorization by the United States Department of the Army, in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

2. In this action, the United States seeks (1) to enjoin the discharge of pollutants into waters of the United States without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendant, at its own expense and at the direction of the United States Environmental Protection Agency, to restore and/or mitigate the damages caused by its unlawful activities; and (3) to require Defendant to pay civil penalties as provided in 33 U.S.C. § 1319(d).

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the District of Montana pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because Defendant conducts business in

this District, the subject property is located in this District, and the cause of action alleged herein arose in this District.

5. Notice of the commencement of this action has been provided to the State of Montana pursuant to CWA section 309(b), 33 U.S.C. § 1319(b).

THE PARTIES

6. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

7. Defendant Lone Moose Meadows, LLC is a limited liability company organized under the laws of the State of Oregon. Lone Moose Meadows, LLC's address is 1000 Lone Moose Drive, Big Sky, Montana.

8. At all times relevant to the Complaint, Defendant either owned or otherwise controlled the real property that is the subject of this Complaint and/or otherwise controlled or engaged in the activities that occurred on the property.

STATUTORY BACKGROUND

9. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit issued pursuant to CWA section 404, 33 U.S.C. § 1344.

10. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

11. CWA section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

12. CWA section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, dredged spoil, rock, and sand.

13. CWA section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

14. 33 C.F.R. § 328.3(a)(1), (2), (5) and (7), and 40 C.F.R. § 232.2, define "waters of the United States" to include: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

15. 33 C.F.R. § 328.3(b) and 40 C.F.R. §§ 122.2 and 232.2 define "wetlands" as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

16. CWA section 502(14), 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

17. CWA section 502(5), 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, partnership [or] association."

18. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

19. CWA section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a) or who violates any order issued by the Administrator of the Environmental Protection Agency under section 301(a), 33 U.S.C. § 1311(a).

GENERAL ALLEGATIONS

20. Commencing in approximately 1997, Defendant and/or persons acting on its behalf, discharged dredged or fill material into waters of the United States without a permit under CWA section 404 at property known as Lone Moose Meadows in Gallatin County, Montana (hereinafter referred to as the "Lone Moose Meadows site").

21. The dredged or fill material that Defendant and/or persons acting on its behalf caused to be discharged includes, among other things, dirt, spoil, rock and sand, all of which constitute "pollutants" as defined in CWA section 502(6), 33 U.S.C. § 1362(6).

22. Defendant and/or persons acting on its behalf used mechanized land-clearing and earth-moving equipment to accomplish the discharges. This equipment constitutes "point sources" as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

23. Defendant did not obtain a permit from the Secretary of the Army, acting through the Chief of Engineers, for the discharges of dredged or fill material into waters of the United States as required by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344.

24. Defendant either owned, leased or otherwise controlled the land on which each unauthorized discharge of dredged or fill material into waters of the United States occurred.

25. Defendant conducted, contracted for, supervised and/or otherwise controlled the unauthorized activities at issue in Paragraph 20.

26. Defendant is a person within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

27. Defendant has violated and continues to violate CWA section 301(a), 33 U.S.C. § 1311(a), by its unauthorized discharges of dredged or fill material into waters of the United States, including wetlands, at the Lone Moose Meadows site.

28. Each day that such material remains in place constitutes a separate violation of CWA section 301(a), 33 U.S.C. § 1311(a).

29. Unless enjoined, Defendant is likely to continue to discharge dredged or fill material into and/or to allow dredged or fill material to remain at the Lone Moose Meadows site in violation of CWA section 301, 33 U.S.C. § 1311.

COUNT 1

30. Plaintiff repeats and realleges the allegations set forth in Paragraphs 20 through 29.

31. Commencing in approximately 1997, Defendant and/or persons acting on its behalf discharged dredged or fill material into the Middle Fork of the West Fork of the Gallatin River and into streams, creeks, drainages and wetlands at the Lone Moose Meadows site located in Gallatin County, Montana in connection with the construction of road crossings, bridges and ski runs.

32. The Middle Fork of the West Fork of the Gallatin River and the streams, creeks, drainages and wetlands at the Lone Moose Meadows site into which Defendant discharged dredged or fill material are "waters of the United States" within the meaning of the CWA and the regulations promulgated thereunder.

33. Defendant's activities at the Lone Moose Meadows site resulted in the filling of or adverse impacts to over an acre of rivers, streams and wetlands which are waters of the United States.

COUNT 2

34. Plaintiff repeats and realleges the allegations set forth in Paragraphs 20 through 33.

35. On January 28, 2003, Region 8 of the United States Environmental Protection Agency issued a Findings of Violation and Order for Compliance to Defendant.

36. The Order for Compliance specified certain actions that Defendant was required to complete in order to come into compliance with the Clean Water Act.

37. Defendant did not comply with certain requirements of the Order for Compliance and failed to comply with other requirements in a timely manner.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

That the Defendant be permanently enjoined from discharging or causing the discharge of dredged or fill material or other pollutants into any waters of the United States except in compliance with the CWA;

That the Defendant be enjoined to undertake measures, at its own expense and at the direction of the United States Environmental Protection Agency, to effect complete restoration of the Lone Moose Meadows site and/or to conduct compensatory mitigation at the Lone Moose Meadows site, as appropriate;

That Defendant be assessed pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of each violation of CWA section 301(a), 33 U.S.C. § 1311(a);

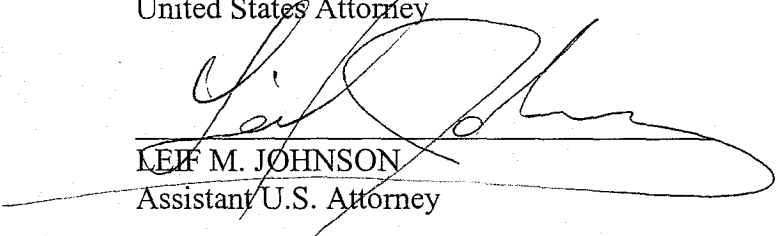
That Defendant be assessed pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of violation of the Order for Compliance issued under CWA section 309 (a), 33 U.S.C. § 1319(a);

That the United States be awarded costs and disbursements in this action; and

That this Court grant Plaintiff United States of America, such other relief as the Court may deem just and proper.

DATED this 5th day of November 2005.

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